

Good Afternoon Chair and members of the committee. My name is Michael Fasbender, and I reside here in L&C County. I currently have an appeal in front of the Supreme Court regarding many of the issues that this bill attempts to clarify, but I am going to focus on that portion of the proposed bill that is near and dear to my heart ... the due process rights afforded landowners when government wants to implement zoning.

The following is taken from the 1971 Legislative Council Subcommittee on Local Government Report on HB79 regarding the purpose of interim zoning. " ... to allow county government to cope with the potentially major land use problems which, because of the urgency of the situation, cannot be effectively controlled through the normal process of completing the required comprehensive plan (*now growth policy*) and adopting land use regulations."

As you can clearly see, the intent of the statute was to allow counties who had not adopted growth policies to be able to implement zoning on an interim or temporary basis. As attested to by the recent repeal of the growth policy in Ravalli County, counties cannot adopt zoning unless they have adopted a growth policy.

I now direct you to 76-2-205. **Procedure for adoption of regulations and boundaries.** The board of county commissioners *shall* observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations: (emphasis added).

The fundamental principle of due process requires that counties give notice and allow hearing on any proposed zoning or amendments. 76-2-205 outlines those requirements. It is my opinion that in a recent ruling, District Judge Sherlock misinterpreted the law regarding the adoption requirements for interim zoning, and we are challenging his ruling in the Montana Supreme Court. There must be due process allowed for landowners, and unless interim zoning is not a "zoning regulation" then the "shall" language in 76-2-205 clearly applies. The bill before you today only clarifies existing law in this regard.

For more information on the issue, I direct your attention to an Attorney General's opinion. 46 Op. Atty. Gen. Mont. #5 (1995). This opinion, which was in

regards to city zoning instead of county zoning, is still a strikingly parallel analysis of the due process requirements for zoning. In his opinion, Attorney General Joe Mazurek wrote, "I am unwilling to imply what is, in essence, the repeal of a landowner's protest rights whenever a change in an existing ordinance is made through the use of the interim zoning ordinance procedure."

Further, this issue has already been in front of the Montana Supreme Court on two separate occasions. The first was *Bryan Dev. Ass'n v. Dagel*, 166 Mont. 252, (Mont. 1975), and the second was *State ex rel. Christian, Spring, Sielbach & Assocs. V. Miller*, 169 Mont. 242 (Mont. 1976). The Montana Court held that 76-2-205 and 76-2-206 were sister statutes, and should be construed together, and that notice and hearing were a requirement for the adoption of interim zoning.

Montana Law consistently provides a freeholder protest as a check mechanism as a balance to local government authority to impact freeholder property rights. I would urge you to continue that tradition, and to support the bill in front of you today. The possibility of a freeholder protest will give incentive to local governments to engage the public, and encourage local governments and landowners to work hand in hand to guide growth in their communities. The bill before you will encourage public involvement, and it is my belief that public involvement in government is paramount to making our system work.